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*Via Fed Ex*

September 13, 2007

Connecticut Siting Council  
David Martin, Analyst  
10 Franklin Square  
New Britain, CT 06051

**RE: Docket No. 331 - Sprint/East Haven - Brief**

Dear Mr. Martin:

Enclosed for filing are an original and twenty copies of Sprint Nextel Corporation's Post-Hearing Brief in this matter. Please let me know if you have any questions.

Very truly yours,

**BROWN RUDNICK BERLACK ISRAELS LLP**

By: \_\_\_\_\_

  
Thomas J. Regan

Enclosures

# 40243792 v1 - MERCIECM - 026122/0001

## CONNECTICUT SITING COUNCIL

In re:

Sprint Nextel Corporation's Application for a : **Docket No. 331**  
Certificate of Environmental Compatibility and :  
Public Need for the Construction, Maintenance and :  
Operation of a Telecommunications Facility Located :  
at 836 Foxon Road, East Haven, Connecticut. : September 13, 2007

### **SPRINT NEXTEL CORPORATION'S POST-HEARING BRIEF**

#### **I. INTRODUCTION**

The record in this matter unequivocally demonstrates that Sprint Nextel Corporation's ("Sprint") proposal to construct a telecommunications facility in East Haven, Connecticut is necessary and will have minimal environmental impact. This brief summarizes Sprint's position concerning the evidence presented in its application to the Connecticut Siting Council ("Council") for a certificate of environmental compatibility and public need ("Certificate") authorizing the construction, maintenance and operation of a wireless telecommunications facility ("Facility") at 836 Foxon Road in East Haven, Connecticut (the "Application") and during the Application process.

#### **II. JURISDICTION**

Pursuant to Conn. Gen. Stat. § 16-50k, the Council has jurisdiction over the construction, operation and maintenance of certain "facilities" that may have a substantial adverse environmental effect on the state. Specifically,

[N]o person shall ... commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the council, have a substantial adverse environmental effect, in the state without having first obtained a certificate of environmental compatibility and public need...

Conn. Gen. Stat. § 16-50k.

Under Conn. Gen. Stat. § 16-50i(a)(6), a “facility” includes “telecommunication towers, including associated telecommunications equipment, owned or operated by the state, a public service company or a certified telecommunications provider.” Sprint is a certified telecommunications provider licensed by the Federal Communications Commission and therefore, Sprint’s proposed flagpole qualifies as a “facility” as defined by Conn. Gen. Stat. § 16-50i(a)(6). Thus, the Council has jurisdiction over this Application.

The criteria guiding the Council’s decision to grant Sprint’s Application are set forth in Conn. Gen. Stat. § 16-50p(a), which provides that the Council must determine:

(1) A public need for the facility and the basis of the need; (2) the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife; (3) why the adverse effects or conflicts referred to in subdivision (2) of this subsection are not sufficient reason to deny the application . . . .

Sprint has established, by a preponderance of the evidence as set forth below, its need for a wireless telecommunications facility in East Haven as well as the lack of any significant adverse environmental impact.

## **II. BACKGROUND**

In May 2004 Sprint began its site search by creating a computer model identifying the area where a telecommunications facility must be located to provide the requisite coverage and to offload capacity from surrounding sites.<sup>1</sup> Once the area was designated, Sprint searched for existing structures in the area suitable for its purposes.<sup>2</sup> The area around Foxon Road in East Haven is comprised mainly of small residential parcels with commercial development along

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<sup>1</sup> Sprint’s Exhibit (“SP”)-1 at 8; SP-2 at 1; Public Hearing Transcript dated August 14, 2007 (“Tr.”) 3:05 p.m. at 31.

<sup>2</sup> SP-1 at 8.

Foxon Road.<sup>3</sup> The commercial structures did not have enough height to provide the coverage Sprint requires and are generally located on small parcels that cannot accommodate a raw land facility.<sup>4</sup> Such is the case at the CVS Plaza and the Fox Haven Plaza.<sup>5</sup> Sprint did investigate three raw land parcels in the area; one was eliminated because it was too far outside of the search area and had wetland issues; the second was eliminated because it is surrounded by residential parcels and the only access to the property is between two houses; and the third, a nearby gravel pit, was eliminated because it would generate a significant amount of interference with Sprint's New Haven site.<sup>6</sup> Finally, Sprint decided to proceed with a raw land build on the commercial parcel at 836 Foxon Road.<sup>7</sup>

On January 11, 2006, Sprint provided notice of the filing of the Application to the Town of East Haven and the City of New Haven. In February 2006 Sprint placed calls to both the Town of East Haven and the City of New Haven to follow up on its filing. Neither municipality requested a meeting with Sprint or had any comments on Sprint's plans.<sup>8</sup>

In April 2006, Sprint published notice of its intent to file the Application in the New Haven Register and the East Haven Courier. Concurrently, Sprint sent registered letters to the abutting property owners notifying them of Sprint's intent to file its Application. Any property owners that did not sign their return receipts were sent another copy of the notice via first class mail, no return receipt requested. On March 27, 2007, Sprint proceeded to file its Application with the Council.<sup>9</sup> Subsequently, Cellco Partnership d/b/a Verizon Wireless ("Verizon") and

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<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> SP-1 at 10.

<sup>9</sup> SP-1 at 4, 9.

Omnipoint Communications, Inc. ("T-Mobile") were both granted Intervenor status in the proceeding.<sup>10</sup>

The Council, after giving due notice thereof, held a public hearing on this Application on August 14, 2007, pursuant to Conn. Gen. Stat. § 16-50m, at the East Haven Senior Center (the "Public Hearing").<sup>11</sup> Sprint flew a red balloon at a height of 100 feet from 7:30 a.m. until 6:00 p.m. on the day of the Public Hearing in order for the public to ascertain the visibility of the Facility.<sup>12</sup> Sprint also posted a sign with the Public Hearing information at the subject property on July 26, 2007.<sup>13</sup> The Public Hearing began at 3:05 p.m. and reconvened at 7:07 p.m.<sup>14</sup> Prior to the Public Hearing, the Applicant, Verizon, T-Mobile, the Council and the Council's staff completed a field inspection of the site beginning at 2:00 p.m.<sup>15</sup>

### **III. NEED**

The first prong of the Council's decision making process as to whether or not a Certificate should be granted is to determine the requisite need for the Facility. The United States Congress, in the Telecommunications Act of 1996, determined that there exists a national need for wireless services such as those provided by Sprint. In making such a determination, the federal government preempted the states' need to make that determination. The Telecommunications Act of 1996 also sought to foster competition in the marketplace and prohibit states from discriminating against functionally equivalent wireless carriers. Therefore,

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<sup>10</sup> Record.

<sup>11</sup> Record.

<sup>12</sup> Tr. 3:05 p.m. at 12.

<sup>13</sup> Id.

<sup>14</sup> Record.

<sup>15</sup> Record.

although a particular area may already have wireless coverage provided by a different carrier, Sprint has the right to also offer its services in that same area.<sup>16</sup>

Specifically, the Council must find adequate need for this particular Facility. To that end, Sprint as well as Verizon and T-Mobile unquestionably demonstrated, through testimony and exhibits, their need for this Facility in East Haven. Sprint's coverage plots, computer modeling, dropped call data and Public Hearing testimony all verify Sprint's gap in wireless coverage along Route 80 as well as in the immediately surrounding areas of East Haven.<sup>17</sup> Currently, coverage in this area is well below Sprint's minimum acceptable signal strength of -92 dBm.<sup>18</sup> With this Facility, Sprint will be able to provide approximately 1.8 miles of coverage along Route 80 as well as off-load capacity from its surrounding sites.<sup>19</sup> To fulfill its deficiency in coverage while allowing for collocation and the ability to off-load volume from surrounding sites, Sprint's minimum antenna centerline necessary is 100 feet.<sup>20</sup> Verizon and T-Mobile also provided evidence through testimony and exhibits of their need to collocate at the proposed Facility in order to fulfill their gaps in coverage in this area of East Haven.<sup>21</sup>

Clearly, the cumulative effect of the evidence presented by Sprint, Verizon and T-Mobile demonstrates an acute deficiency in the wireless services currently provided along Route 80 and the need to locate a Facility at 836 Foxon Road to fulfill this deficiency. Coupled with the FCC's determination of a general public need for wireless service, the evidence in the record establishes the requisite "public need" as set forth in Conn. Gen. Stat. § 16-50p(a).

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<sup>16</sup> SP-1 at 5-6; Tr. 3:05 p.m. at 4-5.

<sup>17</sup> SP-1 at 13; SP-2; Tr. 3:05 p.m. at 14-15, 31.

<sup>18</sup> SP-1 at 13; SP-2 at 1.

<sup>19</sup> SP-2 at 4; *See* Tr. 3:05 p.m. at 31.

<sup>20</sup> SP-1 at 13-14; SP-2; Tr. 3:10 p.m. at 13-14.

<sup>21</sup> Verizon's Exhibit 1; T-Mobile's Exhibit 1; Tr. 3:05 p.m. at 50-53, 69.

### III. IMPACT

The Facility will not have a significant adverse effect on the environment, including public health and safety.

#### *A) Ecological Resources*

The development activities proposed at the Site will not significantly impact any wetlands or watercourses.<sup>22</sup> There will be no daily water usage or wastewater discharge associated with building or maintaining the Facility, and no water supply or sanitary facilities are proposed at the Site. The plan of development includes erosion and sediment control measures to minimize soil exposure, control run-off, shield and/or bind the soil, and trap sediments. Sprint will also use common building materials that will not produce any environmentally damaging leachates and will not use transformers containing poly-chlorinated biphenyls.<sup>23</sup>

No air pollutants will be generated during the development of the Site or during the normal operations of the Facility. In addition, the only noise associated with the Facility will be during its construction. The noise from such activity, however, is equal to the noise produced when constructing a single family home and will cease when the construction ends. The construction period is estimated at approximately six weeks. Post-construction, Sprint does not anticipate having an affect on the traffic pattern in the area as Sprint will make only one monthly maintenance and inspection visit to the Site.<sup>24</sup>

In addition, due to its location adjacent to a commercial building, Sprint does not anticipate that the Facility will have any impact on the area's wildlife population.<sup>25</sup>

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<sup>22</sup> SP-1 at 15-16.

<sup>23</sup> Id.

<sup>24</sup> SP-1 at 6-17.

<sup>25</sup> SP-1 at 17-18.

*B) Visual Resources*

Sprint was particularly careful while siting this Facility to balance its coverage needs with the visual impact of the Facility on nearby residential areas. For that reason, Sprint is proposing a 100-foot flagpole versus a monopole with a complete array of antennas.<sup>26</sup> As Mr. Wells testified at the Public Hearing “the visibility...outweigh[s] the RF concerns in this case....I don’t think I can present a strong enough argument for a full array.”<sup>27</sup>

In addition, Sprint is willing to relocate the Facility, at the discretion of the Council, to the front of the building to lessen the impact the Facility might have on residences to the south. Mr. Libertine testified that by relocating the Facility to the front of the property “it certainly helps to camouflage a good portion of the overall facility. And in addition, I don’t think it would impact the overall visibility to the north because there’s already a flagpole in that position. Certainly it’s a little bit higher of a height, but with a flag I think it certainly is in context with the area.”<sup>28</sup>

*C) Cultural & Historic Resources*

There will be no adverse impacts on any cultural resources in the East Haven area as a result of the Facility. Sprint, as part of its site investigation process, conducted a thorough review of the environmental resources outlined in the National Environmental Policy Act (“NEPA”). The review assists Sprint in determining if the Facility lies in an environmentally or culturally sensitive area. As part of the investigation, Sprint reviewed several criteria including: officially designated wilderness areas, wildlife preserves, threatened or endangered species habitats, the National Register of Historic Places, Indian religious sites and flood plains. The NEPA review concluded that the Facility will not lie within an environmentally or culturally

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<sup>26</sup> Tr. 3:05 p.m. at 15.

<sup>27</sup> Tr. 3:05 p.m. at 21.



sensitive area and there will be no adverse impact on any historical resource as a result of the Facility.<sup>29</sup>

*D) Safety*

The Facility will not pose any risk to human health, be it the community-at-large or employees who visit the Facility. Sprint's calculations demonstrate that the power density will be significantly less than the FCC mandated limits in all locations around the Facility, even with extremely conservative assumptions.<sup>30</sup>

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<sup>28</sup> Tr. 7:07 p.m. at 23.

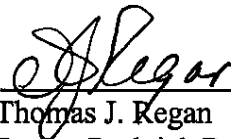
<sup>29</sup> SP-1 at 20, Tab 14.

<sup>30</sup> Id.

#### IV. CONCLUSION

Sprint has provided ample evidence in this docket for the Council to conclude that a Facility is necessary at 836 Foxon Road in East Haven to provide wireless coverage to Route 80 and off-load capacity from surrounding sites. Moreover, Sprint has proven that a Facility in this location will have minimal environmental impact. Therefore, Sprint respectfully requests that the Council grant its Application for a Certificate at 836 Foxon Road in East Haven, Connecticut.

Respectfully submitted,  
Sprint Nextel Corporation

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**Certificate of Service**

On September 13, 2007, a copy of Sprint Nextel Corporation's Post-Hearing Brief was sent via first class mail to:

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#### **IV. CONCLUSION**

Sprint has provided ample evidence in this docket for the Council to conclude that a Facility is necessary at 836 Foxon Road in East Haven to provide wireless coverage to Route 80 and off-load capacity from surrounding sites. Moreover, Sprint has proven that a Facility in this location will have minimal environmental impact. Therefore, Sprint respectfully requests that the Council grant its Application for a Certificate at 836 Foxon Road in East Haven, Connecticut.

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